

CITY COUNCIL REPORT



Meeting Date: October 24, 2023
General Plan Element: *Public Services and Facilities*
General Plan Goal: *Provide City Service Facilities to meet the needs of the community.*

ACTION

Authorize Contracts for On-Call Architectural Services for Capital Improvement and Facilities projects. Adopt Resolution 12957 authorizing On-Call Architectural Contract 2023-156-COS with Fucello Architects LLC, Contract 2023-157-COS with Weddle & Gilmore Architects LLC, and Contract 2023-158-COS with DWL Architects-Planners, Inc. for the initial two-year term with the option to extend for three additional one-year periods per contract.

BACKGROUND

The purpose of this action is to award contracts to three architectural consulting firms to provide architectural services on an as needed basis for various capital improvement and facilities maintenance projects at various locations throughout the City. The contract terms are two years with the option to add three additional one-year extensions.

Staff envisions using these contracts to accomplish design tasks associated with projects as part of the facilities program and other capital improvement projects as deemed appropriate by the City Engineer. For larger individual projects, staff will continue to select architects using qualification-based selection procedures and seek Council approval for individual architectural contracts.

The maximum annual aggregate limit of \$3,000,000 per contract is consistent with anticipated requirements that would be suitable for execution using these contracts over the next year. No unencumbered funds will roll over from the previous year of the contract into the new year.

ANALYSIS & ASSESSMENT

Recent Staff Action

Staff prepared and publicly advertised a Request for Qualifications (RFQ) for on-call architectural services. Staff received twenty-three responses by the deadline of August 14, 2023. A panel of five City staff members evaluated the responses and conducted interviews with the top 6 consultants. Interviews were held on September 12 and 18, 2023 and the panel selected the top three respondents. The three firms the panel selected were Fucello Architects, Weddle & Gilmore

Architects, and DWL Architects + Planners. The attached matrix indicates the Selection Panel's ranking of the firms.

Community Involvement

City Staff will continue to use the same community involvement and notification procedures for work orders issued under these contracts that are used when projects are designed using other procurement methods to meet the needs of residents and businesses throughout the project areas.

RESOURCE IMPACTS

Available funding

Authorization for the award of these contracts does not obligate any funding. Funds will be obligated as work orders are awarded for specific tasks.

Staffing, Workload Impact

Existing Capital Project Management and Facilities staff resources are available to provide design and construction contract administration, construction management and inspection services for these projects. The contract administrator responsible for administration of these on-call engineering contracts is Melanie Gibson, Public Works Project Coordinator, Capital Projects Management, Public Works Division.

Future Budget Implications

Combined design cost for all projects will not exceed \$3,000,000 for the initial two-year term per contract. There is no additional operating budget required because of this contract.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution 12957 authorizing on-call Architectural Contract 2023-156-COS with Fucello Architects, 2023-157-COS with Weddle & Gilmore LLC and 2023-158-COS with DWL Architects + Planners, Inc. for On-Call Architectural Services throughout the City as needed.

Proposed Next Steps:

Following approval of the on-call contracts, the next individual projects identified for execution will be awarded under the terms of the contract to include the most current cost estimates and cost limits.

RESPONSIBLE DEPARTMENT(S)

Public Works Division, Capital Project Management

STAFF CONTACTS (S)

Melanie Gibson, Public Works Project Coordinator, mgibson@scottsdaleaz.gov

APPROVED BY



Daniel J. Worth, Director, Public Works

(480) 312-5555, dworth@scottsdaleaz.gov

10-9-23

Date

ATTACHMENTS

1. Resolution 12957
2. Evaluation Matrix
3. Contract 2023-156-COS
4. Contract 2023-157-COS
5. Contract 2023-158-COS

RESOLUTION NO. 12957

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA AUTHORIZING THE CITY OF SCOTTSDALE TO ENTER INTO CONTRACT NOS. 2023-156-COS WITH FUCELLO ARCHITECTS, LLC, 2023-157-COS WITH WEDDLE & GILMORE ARCHITECTS, LLC, AND 2023-158-COS WITH DWL ARCHITECTS-PLANNERS, INC. TO PROVIDE ON-CALL ARCHITECTURAL DESIGN SERVICES FOR THE CITY OF SCOTTSDALE.

WHEREAS, the City desires to contract for On-Call Architectural Design Services, which include design, construction documents and construction administration for facility improvement, renovation and enhancement projects throughout the City as needed; and

WHEREAS, the architectural firms of Fucello Architects LLC, Weddle & Gilmore Architects, LLC and DWL Architects-Planners, Inc. are qualified to render the services desired by the City.

BE IT RESOLVED by the Council of the City of Scottsdale as follows:

Section 1. That the Mayor is authorized and directed to execute Contract No. 2023-156-COS with Fucello Architects LLC; and Contract No. 2023-157-COS with Weddle & Gilmore Architects, LLC; and Contract No. 2023-158-COS with DWL Architects-Planners, Inc. for Architectural Design services needed on an on-call basis for City of Scottsdale facility improvements in an amount not to exceed three million dollars (\$3,000,000) for the initial two year term of each contract.

PASSED AND ADOPTED by the Council of the City of Scottsdale this ____ day of _____, 2023.

CITY OF SCOTTSDALE, an
Arizona municipal corporation

ATTEST:

By: _____
Ben Lane, City Clerk

By: _____
David D. Ortega, Mayor

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY



Sherry R. Scott, City Attorney
By: Eric C. Anderson, Senior Assistant City Attorney

ATTACHMENT 1

Solicitation for On-Call Contract - 23SQ012
Citywide Architectural Services

Company	Rank
180 Degrees Design + Build	
Architectural Resource Team	
ARCOR Inc.	
Arrington Watkins Architects	
Breckenridge Group	
BWS Architects	
Cornerstone Architecture + Design	
DFDG Architecture	
DWL Architects + Planners	2
Fucello Architects	1
Gensler	
GH2 ARCHITECTS	
GLHN Architects & Engineers	
Holly Street Studio	
JammonStudios	
Krause Architecture + Interiors	
Larson Associates Architects,	
LEA Architects	
Marlene Imirzian & Associates Architects	
MOR Studio	
Perlman Architects	
RSP Architects	
Weddle Gilmore Architects	3



CITY OF SCOTTSDALE

ARCHITECTURAL SERVICES CONTRACT

SOLICITATION NO. 23SQ012

CONTRACT NO. 2023-156-COS

THIS CONTRACT, entered into this 24th day of October, 2023, between the City of Scottsdale, an Arizona municipal corporation, the "CITY" and Fucello Architects, LLC, an Arizona Domestic Limited Liability Corporation, the "ARCHITECT."

RECITALS

- A.** The Mayor of the City of Scottsdale is authorized by the City Charter to execute contracts for professional services; and
- B.** The City intends to contract for ARCHITECTURAL services with Fucello Architects, LLC, for one or more individual task orders.
- C.** The Architect is qualified to render the services desired by the City.

FOR AND IN CONSIDERATION of the parties' mutual covenants and conditions, the City and the ARCHITECT agree as follows:

1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION

1.1 Scope of Services

- A.** Architect will furnish any and all services specified in an individual Task Order for which it is issued a Task Order Notice to Proceed in accordance with this Contract.

The Architect shall complete any Task Orders issued by the City in accordance with the fee schedule set forth in Exhibit A.

1.2 Acceptance and Documentation

- A.** Each task will be reviewed and approved by the Contract Administrator to determine acceptable completion.

- B. The City will provide all necessary information to the Architect for timely completion of the tasks specified in Section 1.1 above.
- C. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract are to be and remain the property of the City and are to be delivered to the Contract Administrator before final payment is made to the Architect.

2.0 FEES AND PAYMENTS

2.1 Fee Schedule

The fee for individual projects performed under this contract will be negotiated on a project-by-project basis as task orders. The amount paid to the Architect under this contract for all task orders shall not exceed \$3,000,000 for the initial contract term and \$1,500,000 for any successive one-year contract renewal. The task orders shall be negotiated using the rates in effect at the time of this contract, as noted in Exhibit A and billed on a time and materials basis. No lump sum fee proposals will be allowed.

2.2 Payment Approval

The time spent for each task must be recorded and submitted to the Contract Administrator. The Architect must maintain all necessary documents and accounting records pertaining to time billed and to costs incurred and make these materials available at all reasonable times during the Contract period.

Monthly payments will be made to the Architect on the basis of a progress report submitted by the Architect for work completed through the last day of the preceding calendar month. Each task is subject to review and approval by the Contract Administrator to determine acceptable completion.

The Contract Administrator will prepare a partial payment request document for the Architect's acceptance. However, not more than 90% of the total Contract price will be paid before City's final acceptance of all completed work.

The Contract Administrator reserves the exclusive right to determine the amount of work performed and payment due the Architect on a monthly basis.

All charges must be approved by the Contract Administrator before payment.

2.2.1 Payment Terms

The City of Scottsdale's payment terms for Architectural work under State of Arizona A.R.S. Title 34 requirements is fourteen (14) days after invoice submittal by the Architect and the work is certified and approved by the City Contract Administrator.

The City has seven (7) days after receipt of the invoice to prepare and issue a written finding setting forth those items in detail which are not approved for payment under the Contract and which are not certified by the City Contract

Administrator. Until such time as such issues are resolved and certified by the City the fourteen (14) day payment term will not have commenced.

3.0 GENERAL TERMS AND CONDITIONS

3.1 Contract Administrator

The Contract Administrator for the City will be Melanie Gibson, or designee. The Contract Administrator will oversee the performance of this Contract, assist the Architect in accessing the organization, audit billings, and approve payments. The Architect must submit all reports and special requests through the Contract Administrator. The Contract Administrator has the authority to authorize Change Orders up to the limits permitted by the City's Procurement Code.

3.2 Term of Contract

The initial term of this Contract shall be for a period of two years and will commence on or about the 25th day of October, 2023, and will be for two year(s) with the option to extend for three additional years in one year increments.

1. The option to extend may be exercised based on Architect's successful performance and the needs of the City.
2. A Contract Modification will be processed for each extension and will commence on or about the anniversary date of the Contract. Each extension must be authorized by the City Engineer or designee.
- B. The Contract will remain in full force and effect during the performance of any Task Order.

3.3 Termination or Cancellation of Contract

The City may terminate this Contract or abandon any portion of a project that has not been performed by the Architect.

Termination for Convenience: The City has the right to terminate this Contract or any part of it for its sole convenience with thirty (30) days written notice. If terminated, the Architect must immediately stop all work and will immediately cause any of its suppliers and Subcontractors to stop all work. As payment in full for services performed to the date of the termination, the Architect will receive a fee for the percentage of services actually completed. This fee will be in the amount mutually agreed upon by the Architect and the City, based on the Scope of Work.

If there is no mutual agreement, the Contract Administrator will determine the percentage of completion of each task detailed in the Scope of Work and the Architect's compensation will be based on this determination. The City will make this final payment within sixty (60) days after the Architect has delivered the last of the partially completed items. The Architect will not be paid for any work done after receipt of the notice of termination or for any costs incurred by the

Architect's suppliers or Subcontractors, which the Architect could reasonably have avoided.

Cancellation for Cause: The City may also cancel this Contract or any part of it with seven (7) days' notice if the Architect defaults, or if the Architect fails to comply with any of the terms and conditions of this Contract. Unsatisfactory performance as determined by the Contract Administrator or failure to provide the City, upon request, with adequate assurances of future performance are all causes allowing the City to terminate this Contract for cause. Upon cancellation for cause, the City will not be liable to the Architect for any amount, and the Architect will be liable to the City for all damages sustained by the default which caused the cancellation.

If the Architect is in violation of any Federal, State, County or City law, regulation or ordinance, the City may terminate this Contract immediately after giving notice to the Architect.

If the City cancels this Contract or any part of the Contract services, the City will notify the Architect in writing, and upon receiving notice, the Architect must discontinue advancing the work and proceed to close all operations.

Upon cancellation, the Architect must deliver to the City all drawings, special provisions, field survey notes, reports, and estimates, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the City. Use of incomplete data will be the City's sole responsibility.

The Architect must appraise the work it has completed and submit its appraisal to the City for evaluation.

If the Architect fails to fulfill in a timely and proper manner its obligations, or if the Architect violates any of the terms of this Contract, the City may withhold any payments to the Architect for the purpose of setoff until the exact amount of damages due the City from the Architect is determined by a court of competent jurisdiction.

If the City improperly cancels the Contract for cause; the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of this Section 3.3.

3.4 Funds Appropriation

If the City Council does not appropriate funds to continue this Contract, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice of termination to the Architect at least thirty (30) days before the end of its current fiscal period and will pay to the Architect all approved charges incurred through the end of that period.

3.5 Audit

The City may audit all of the Architect's records, calculations, and working documents pertaining to this work at a mutually agreeable time and place.

The Architect's records (hard copy, as well as computer readable data), and any other supporting evidence necessary to substantiate any claims related to this Contract must be open to inspection and subject to audit and reproduction by the City's authorized representative as necessary to permit evaluation and verification of the cost of the work, and any invoices, change orders, payments or claims submitted by the Architect or any of his payees. The City's authorized representative must be afforded access, at reasonable times and places, to all of the Architect's records and personnel throughout the term of this Contract and for a period of three (3) years after the final payment.

The Architect must require all Subcontractors and material suppliers (payees) to comply with the provisions of this section by insertion of these requirements in a written Contract between the Architect and payee. These requirements will apply to all Subcontractors.

If an audit discloses overcharges by the Architect to the City in excess of 1% of the total Contract billings, the actual cost of the City's audit must be reimbursed to the City by the Architect. Any adjustments and payments made as a result of the audit or inspection of the Architect's invoices and records will be made within a period of time not to exceed 90 days from presentation of the City's findings to the Architect.

This audit provision includes the right to inspect personnel records as required by Section 3.22.

3.6 Ownership of Project Documents

All documents, including but not limited to, field notes, design notes, tracings, data compilations, studies, and reports in any format, including but not limited to, written or electronic media, prepared in the performance of this Contract will remain the property of the City and must be delivered to the Contract Administrator before final payment is made to the Architect.

When the work detail covers only the preparation of preliminary reports or plans, there will be no limitations upon the City concerning use of the plans or ideas in the reports or plans for the preparation of final construction plans. The City will release the Architect from any liability for the preparation of final construction plans by others.

3.7 Completeness and Accuracy

The Architect will be responsible for the completeness and accuracy of its work, including but not limited to, survey work, reports, supporting data, and drawings, sketches, etc. prepared by the Architect and will correct, at its expense, all errors or omissions which may be disclosed. The cost to correct those errors will be chargeable to the Architect. Additional construction added to the project will not

be the responsibility of the Architect unless the need for additional construction was created by any error, omission, or negligent act of the Architect. The City's acceptance of the Architect's work will not relieve the Architect of any of its responsibilities.

3.8 Attorney's Fees

Should either party bring any action for relief, declaratory or otherwise, arising out of this Contract, the prevailing party shall be entitled to an award of reasonable attorneys' fees, reasonable costs and expenses as determined by the court. All these fees, costs, and expenses will be considered to have accrued on the commencement of the action.

3.9 Successors and Assigns

This Contract shall be binding upon the Architect, its successors and assigns, including any individual, or other entity with or into which the Architect may merge, consolidate, or be liquidated, or any individual or other entity to which the Architect may sell or assign its assets.

3.10 Assignment

Services covered by this Contract may not be assigned or sublet in whole or in part without first obtaining the written consent of the Purchasing Director and Contract Administrator.

3.11 Subcontractors

The Architect may engage Subcontractors as required for the timely completion of this Contract. If the Architect subcontracts any of the work required by the Contract, the Architect remains solely responsible for fulfillment of all the terms of this Contract.

The Architect will pay its Subcontractors within seven (7) calendar days of receipt of each progress payment from the City. The Architect will pay for the amount of the Work performed by each Subcontractor as accepted and approved by the City with each progress payment. In addition, any reduction of retention, if any, by the City will result in a corresponding reduction to Subcontractors who have performed satisfactory work. The Architect will pay Subcontractors the reduced retention within fourteen (14) calendar days of the payment of the reduction of the retention to the Architect. No Contract between the Architect and its Subcontractors may materially alter the rights of any Subcontractor to receive prompt payment and retention reduction as provided in this Contract.

If the Architect fails to make payments in accordance with these provisions, the City may take any of one or more of the following actions:

- A. To hold the Architect in default under this Contract;
- B. Withhold future payments including retention until proper payment has been made to Subcontractors in accordance with these provisions;

- C. Reject all future offers to perform work for the City from the Architect for a period not to exceed 1 year from the completion date of this project; or
- D. Terminate this Contract.

3.12 Alterations or Additions to Scope of Services

The total Scope of the Architectural Services to be performed is stated in this Contract and any Task Orders issued thereto. Any services requested outside the Scope of Work are additional services. The Architect will not perform these additional services without a written Change Order approved by the City. If the Architect performs additional services without a written Change Order, the Architect will not receive any additional compensation.

3.13 Modifications

Any amendment or modification of the terms of this Contract must be in writing and will be effective only after approval of all parties to this Contract.

3.14 Conflict of Interest

The Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Architect, to solicit or secure this Contract, and that it has not paid or agreed to pay any person or persons, other than a bona fide employee working solely for the Architect any fee, commission, percentage, brokerage fee, gifts or any consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City will have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of any fee, commission, percentage, brokerage fee, gift or contingent fee, together with costs and attorney's fees.

The City may cancel any Contract or Agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the City's departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a consultant to any other party to the Contract with respect to the subject matter of the Contract. The cancellation will be effective when written notice from the City is received by all other parties to the Contract, unless the notice specifies a later time (A.R.S. 38-511).

The Architect will fully reveal in writing any financial or compensatory agreement which it has with a prospective bidder before the City's publication of documents for bidding.

3.15 Force Majeure

Neither party will be responsible for delays or failures in performance resulting from acts beyond their control. These acts will include, but not be limited to, acts

of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

3.16 Taxes

The fee listed in this Contract includes all taxes applicable to the services authorized. The City will have no obligation to pay additional amounts for taxes of any type.

3.17 Advertising

No advertising or publicity concerning the City using the Architect's services shall be undertaken without prior written approval of such advertising or publicity by the City of Scottsdale Contract Administrator and by the City Attorney.

3.18 Counterparts

This Contract may be executed in one or more counterparts, and each executed duplicate counterpart will possess the full force and effect of the original.

3.19 Entire Agreement

This Contract contains the entire understanding of the parties and no representations or agreements, oral or written, made before its execution will vary or modify the terms of this Contract.

3.20 Arizona Law

This Contract must be governed and interpreted according to the laws of the State of Arizona.

3.21 Equal Employment Opportunity

During the performance of this Contract, the Architect will follow the Federal government's guidelines to ensure that employees or applicants applying for employment will not be discriminated against because of race, color, religion, sex or national origin.

No Preferential Treatment or Discrimination:

In accordance with Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

3.22 Compliance with Federal and State Laws

The Architect accepts the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. In addition, the Architect accepts the applicability to it of A.R.S. §34-301 and 34-302. The Architect shall include the terms of this provision in all

contracts and subcontracts for work performed under this Contract, including supervision and oversight.

Under the provisions of A.R.S. §41-4401, the Architect warrants to the City that the Architect and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Architect and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by the Architect or any of its subcontractors will be considered a material breach of this Contract and may subject the Architect or Subcontractor to penalties up to and including termination of this Contract or any subcontract.

The City retains the legal right to inspect the papers of any employee of the Architect or any subcontractor who works on this Contract to ensure that the Architect or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of the Architect and any of its subcontractors to ensure compliance with this warranty. The Architect agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

The City will not consider the Architect or any of its subcontractors in material breach of this Contract if the Architect and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USC §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract the Architect enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. The Architect will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The Architect's failure to assure compliance by all its' subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

3.23 Compliance with Americans with Disabilities Act

Architect acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Architect will provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Architect agrees not to discriminate

against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Architect, its employees, agents or assigns will constitute a material breach of this Contract.

3.24 Israel Boycott/Forced Labor Prohibitions

By executing this contract, Architect certifies that it is not currently engaged in and will not for the duration of this contract engage in boycott activity proscribed by A.R.S. § 35-393 *et seq.*

Architect warrants and certifies that it does not currently, and agrees for the duration of the contract that it will not, use:

- 1) The forced labor of ethnic Uyghurs in the People's Republic of China.
- 2) Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
- 3) Any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

If Architect becomes aware during the term of the Agreement that Architect is not in compliance with this paragraph, Architect shall notify the City within five business days after becoming aware of the noncompliance. Failure of Architect to provide a written certification that Architect has remedied the noncompliance within one hundred eighty (180) days after notifying the public entity of its noncompliance, this Agreement shall terminate unless the Term of this Agreement shall end prior to said one hundred eighty (180) day period.

3.25 Evaluation of Architect's Performance

The Architect will be evaluated regarding its performance of this Contract. This evaluation may include, but not be limited to, the following consideration for:

- Completeness
- Accuracy
- Utility Coordination
- Technical Expertise
- Organization
- Appearance of Plans (line work, lettering, etc.)
- Working Relationship with City Staff and Others
- Availability
- Communication Skills (meetings, correspondence, etc.)

This evaluation will be prepared by the staff and used to evaluate the desirability to proceed with negotiations for additional services.

3.26 Notices

All notices or demands required by this Contract must be given to the other party in writing, delivered by hand or by registered or certified mail at the addresses

stated below, or to any other address the parties may substitute by giving written notice as required by this section.

On behalf of the Architect:
Steve Fucello, Principal-in-Charge
Fucello Architects, LLC.
7525 E Camelback Road, Suite 204
Scottsdale, Arizona 85251

On behalf of the City:
Melanie Gibson, Project Coordinator
Capital Project Management
City of Scottsdale
7447 E. Indian School Road, Suite 205
Scottsdale, AZ 85251

If hand delivered, Notices are deemed received on the date delivered. If delivered by certified or registered mail, Notices are deemed received on the date indicated on the receipt. Notice by facsimile or electronic mail is not adequate notice.

3.27 Independent Contractor

The services the Architect provides to the City are that of an Independent Contractor, not an employee, or agent of the City. The City may report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City will not withhold income tax as a deduction from contractual payments unless required under federal or state law. As a result of this, Architect may be subject to I.R.S. provisions for payment of estimated income tax. Architect is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

3.28 Ineligible Bidder

The preparer of bid specifications is not eligible to submit a bid or proposal on the solicitation for which it prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which it prepared the specification.

3.29 Indemnification

To the fullest extent permitted by law, Architect, its successors, assigns and guarantors, must defend, indemnify and hold harmless City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any act or omission, negligence, recklessness, or intentional wrongful conduct by Architect in the performance of this Contract, including but not limited to, any Subcontractor or

anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Architect's and Subcontractor's employees.

Insurance provisions in this Contract are separate and independent from the indemnity provisions of this section and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this section shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

4.0 INSURANCE

A current Acord Certificate is acceptable.

Failure to provide an appropriate Certificate of Insurance will result in rejection of your certificate and delay in Contract execution.

Additionally Certificates of Insurance submitted without referencing a Contract number may be subject to rejection and returned or discarded.

4.1 Insurance Representations and Requirements

- A. General: The Architect agrees to comply with all applicable City ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of the Architect, the Architect must purchase and maintain, at its own expense, the required minimum insurance with insurance companies duly licensed or approved to conduct business in the State of Arizona and with an A.M. Best's rating of B++6 or above with policies and forms satisfactory to City. Failure to maintain insurance as required may result in cancellation of this Contract at the City's option.

- B. No Representation of Coverage Adequacy: By requiring insurance, City does not represent that coverage and limits will be adequate to protect the Architect. The City reserves the right to review any and all of the insurance policies and endorsements cited in this Contract but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements in this Contract or failure to identify any insurance deficiency will not relieve the Architect from, nor may it be considered a waiver of Architect's obligation to maintain the required insurance at all times during the performance of this Contract.

- C. Coverage Term: The Architect must maintain all required insurance in full force and effect until all work or services are satisfactorily performed and accepted by The City of Scottsdale, unless specified otherwise in this Contract.

4.1 Insurance Representations and Requirements – Cont'd

- D. Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall continue uninterrupted throughout the term of this Contract by keeping coverage in force using the effective date of this Contract as the retroactive date on all "claims made" policies. The retroactive date for exclusion of claims must be on or before the effective date of this Contract and can never be after the effective date of this Contract. Upon completion or termination of this Contract, the "claims made" coverage shall be extended for an additional three (3) years using the original retroactive date, either through purchasing an extended reporting option; or by continued renewal of the original insurance policies. Submission of annual Certificates of Insurance, citing the applicable coverages and provisions specified herein, shall continue for three (3) years past the completion or termination of this Contract.
- E. Policy Deductibles and or Self-Insured Retentions: The required policies may provide coverage which contain deductibles or self-insured retention amounts. The Architect is solely responsible for any deductible or self-insured retention amount and the City, at its option, may require the Architect to secure payment of the deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- F. Use of Subcontractors: If any work is subcontracted in any way, the Architect must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the Architect in this Contract. The Architect is responsible for executing the Contract with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.
- G. Evidence of Insurance and Required Endorsements: Before commencing any work or services under this Contract, the Architect must furnish the Contract Administrator with Certificate(s) of Insurance, or formal endorsements issued by the Architect's insurer(s) as evidence that policies are placed with acceptable insurers and provide the required coverages, conditions, and limits of coverage and that the coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage, but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Contract. If any of the required policies expire during the life of this Contract, the Architect's must forward renewal Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.

4.1 Insurance Representations and Requirements – Cont'd

Certificates shall specifically cite the following provisions endorsed to the Architect's policy:

1. The City of Scottsdale, its agents, representatives, officers, directors, officials and employees are named as an Additional Insured under the following policies:
 - a) Commercial General Liability
 - b) Auto Liability
 - c) Excess Liability - Follow Form to underlying insurance as required.
2. The Architect's insurance must be primary insurance for all performance of work under this Contract.
3. All policies, except Professional Liability insurance if applicable, waive rights of recovery (subrogation) against the City, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by the Architect under this Contract.
4. If the Architect receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Architect's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

4.2 Required Coverage

- A. Commercial General Liability: The Architect must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy must cover liability arising from premises, operations, independent contractors, products-completed operations, and personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than the underlying insurance.
- B. Professional Liability: The Architect must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the Architect, or anyone employed by the Architect, or anyone for whose acts, mistakes, errors and omissions the Architect is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims. If the Professional Liability insurance policy is written on a "claims made" basis, coverage must extend for 3 years past completion and acceptance of the work or services, the Architect must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3-year period.

4.2 Required Coverage – Cont'd

- C. Vehicle Liability: If any vehicle is used in the performance of the Scope of Work that is the subject of this contract, the Architect must maintain Business Automobile Liability insurance with a limit of \$1,000,000 each accident on the Architect's owned, hired, and non-owned vehicles

assigned to or used in the performance of the Architect's work or services under this Contract. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than the underlying insurance.

- D. Workers Compensation Insurance: Architect must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes applicable to Architect's employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit. If the Architect is a sole proprietor or a single member limited liability company with no employees and has elected not to purchase Workers' Compensation Insurance; a completed and signed Workers' Compensation Waiver Form will substitute for the insurance requirement.

5.0 SOFTWARE LICENSES

If the Architect provides to the City any software licenses, the following provisions apply:

5.1 Source Code Availability

- A. The Architect must furnish the City, without charge, a single copy of the Source Code for the Software immediately upon the occurrence of any of the following:
1. The Architect becomes insolvent; or
 2. The Architect ceases to conduct business; or
 3. The Architect makes a general assignment for the benefit of creditors;
- or**
4. A petition is filed in Bankruptcy by or against the Architect.
- B. Use of the Source Code may not be subject to any greater restrictions than use of the Software itself.
- C. The City must have the right to modify the Source Code in any manner the City believes is appropriate, provided that the Source Code as modified will remain subject to the restrictions of Section 5.1(B).

5.2 Proprietary Protection

- A. The City agrees that if the Architect informs the City that the Software is confidential information or is a trade secret of the Architect; the Software is disclosed on a confidential basis under this Contract and in accordance with the terms of this Contract.
- B. The Architect shall not use or disclose any knowledge, data or proprietary information relating to the City obtained in any manner.

- C. As permitted by Arizona Law, the parties agree that during the term of this Contract and of all Licenses granted under this Contract, and for a period of 7 years after termination of this Contract and of all licenses granted by this Contract, to hold each others' confidential information in confidence. The parties agree, unless required by government regulations or order of

Court, not to make each others' confidential information available in any form to any third party or to use each other's confidential information for any purposes other than the implementation of this Contract. However, if the Architect's confidential information is requested to be divulged under the provisions of the Arizona Public Records Act, A.R.S., Title 39, the Architect must reimburse the City for the full cost of the City's refusal to release the information, including the costs of litigation, the City's attorney fees, fines, penalties or assessments of the opposing party's attorney fees. Each party agrees to take all reasonable steps to ensure that confidential information is not disclosed or distributed by its employees or agents in violation of the provisions of this Contract.

5.3 Non-Infringement

The Architect warrants that the Software provided to the City does not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary or property right of any person or entity.

In the event of a claim against the City asserting or involving such an allegation, the Architect will defend, at the Architect's expense, and will indemnify and hold harmless the City against any loss, cost, expense (including attorney fees) or liability arising out of the claim, whether or not the claim is successful. In the event an injunction or order is obtained against use of the Software, or if in the Architect's opinion the Software is likely to become the subject of a claim of infringement, the Architect will, at its option and its expense:

1. Procure for the City the right to continue using the Software; or
2. Replace or modify the software so that it becomes non-infringing (this modification or replacement must be functionally equivalent to the original); or –
3. If neither 1 nor 2 is practicable, repurchase the Software on a depreciated basis utilizing a straight line 5-year period, commencing on the date of acceptance.

5.4 Third Party License

The Architect shall sublicense to the City any and all third- party Software required in this Contract. The City reserves the right to accept or reject third party license terms. If the City rejects the terms of a third-party license, the Architect shall be responsible to negotiate acceptable terms or to supply Software from another source with terms acceptable to the City. The City's acceptance of the third-party license terms will not be unreasonably withheld.

6.0 SEVERABILITY AND AUTHORITY

6.1 Severability

If any term or provision of this Contract is found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Contract will remain in full force and effect and the term or provision will be considered to be deleted.

6.2 Authority

Each party warrants that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each party has been properly authorized and empowered to enter into this Contract. Each party acknowledges that it has read, understands, and agrees to be bound by the terms and conditions of this Contract.

7.0 Request for Taxpayer I.D. Number & Certification I.R.S. W-9 Form

Upon request, the Architect shall provide the required I.R.S. W-9 FORM which is available from the IRS website at www.irs.gov under its forms section.

8.0 DONATIONS

No donations allowed. To avoid the appearance of impropriety, Architect shall not make any donation to the City, of any goods or services during the term of this Agreement, unless it has specifically been approved by the City Manager or designee.

The City of Scottsdale by its Mayor and City Clerk have subscribed their names this
____ day of _____, 202____.

CITY OF SCOTTSDALE
an Arizona Municipal Corporation

ATTEST:

David D. Ortega
Mayor

Ben Lane
City Clerk

ARCHITECT:

By: _____

Its: _____

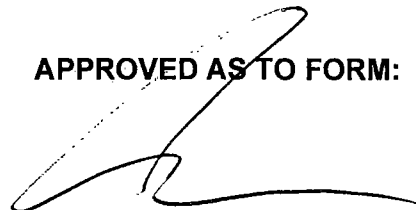
RECOMMENDED:

Alison Tymkiw
City Engineer

George Woods
Risk Management Director

Melanie Gibson
Contract Administrator

APPROVED AS TO FORM:



Sherry R. Scott, City Attorney
By: Eric C. Anderson
Senior Assistant City Attorney



CITY OF SCOTTSDALE

ARCHITECTURAL SERVICES CONTRACT

SOLICITATION NO. 23SQ012

CONTRACT NO. 2023-157-COS

THIS CONTRACT, entered into this 24th day of October, 2023, between the City of Scottsdale, an Arizona municipal corporation, the "CITY" and Weddle & Gilmore Architects, LLC, an Arizona Domestic Professional Limited Liability Corporation, the "ARCHITECT."

RECITALS

- A.** The Mayor of the City of Scottsdale is authorized by the City Charter to execute contracts for professional services; and
- B.** The City intends to contract for ARCHITECTURAL services with Weddle & Gilmore Architects, LLC., for one or more individual task orders.
- C.** The Architect is qualified to render the services desired by the City.

FOR AND IN CONSIDERATION of the parties' mutual covenants and conditions, the City and the ARCHITECT agree as follows:

1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION

1.1 Scope of Services

- A.** Architect will furnish any and all services specified in an individual Task Order for which it is issued a Task Order Notice to Proceed in accordance with this Contract.

The Architect shall complete any Task Orders issued by the City in accordance with the fee schedule set forth in Exhibit A.

1.2 Acceptance and Documentation

- A.** Each task will be reviewed and approved by the Contract Administrator to determine acceptable completion.

- B. The City will provide all necessary information to the Architect for timely completion of the tasks specified in Section 1.1 above.
- C. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract are to be and remain the property of the City and are to be delivered to the Contract Administrator before final payment is made to the Architect.

2.0 FEES AND PAYMENTS

2.1 Fee Schedule

The fee for individual projects performed under this contract will be negotiated on a project-by-project basis as task orders. The amount paid to the Architect under this contract for all task orders shall not exceed \$3,000,000 for the initial contract term and \$1,500,000 for any successive one year contract renewal. The task orders shall be negotiated using the rates in effect at the time of this contract, as noted in Exhibit A and billed on a time and materials basis. No lump sum fee proposals will be allowed.

2.2 Payment Approval

The time spent for each task must be recorded and submitted to the Contract Administrator. The Architect must maintain all necessary documents and accounting records pertaining to time billed and to costs incurred and make these materials available at all reasonable times during the Contract period.

Monthly payments will be made to the Architect on the basis of a progress report submitted by the Architect for work completed through the last day of the preceding calendar month. Each task is subject to review and approval by the Contract Administrator to determine acceptable completion.

The Contract Administrator will prepare a partial payment request document for the Architect's acceptance. However, not more than 90% of the total Contract price will be paid before City's final acceptance of all completed work.

The Contract Administrator reserves the exclusive right to determine the amount of work performed and payment due the Architect on a monthly basis.

All charges must be approved by the Contract Administrator before payment.

2.2.1 Payment Terms

The City of Scottsdale's payment terms for Architectural work under State of Arizona A.R.S. Title 34 requirements is fourteen (14) days after invoice submittal by the Architect and the work is certified and approved by the City Contract Administrator.

The City has seven (7) days after receipt of the invoice to prepare and issue a written finding setting forth those items in detail which are not approved for payment under the Contract and which are not certified by the City Contract

Administrator. Until such time as such issues are resolved and certified by the City the fourteen (14) day payment term will not have commenced.

3.0 GENERAL TERMS AND CONDITIONS

3.1 Contract Administrator

The Contract Administrator for the City will be Melanie Gibson, or designee. The Contract Administrator will oversee the performance of this Contract, assist the Architect in accessing the organization, audit billings, and approve payments. The Architect must submit all reports and special requests through the Contract Administrator. The Contract Administrator has the authority to authorize Change Orders up to the limits permitted by the City's Procurement Code.

3.2 Term of Contract

The initial term of this Contract shall be for a period of two years and will commence on or about the 25th day of October, 2023, and will be for two year(s) with the option to extend for three additional years in one year increments.

1. The option to extend may be exercised based on Architect's successful performance and the needs of the City.
 2. A Contract Modification will be processed for each extension and will commence on or about the anniversary date of the Contract. Each extension must be authorized by the City Engineer or designee.
- B. The Contract will remain in full force and effect during the performance of any Task Order.

3.3 Termination or Cancellation of Contract

The City may terminate this Contract or abandon any portion of a project that has not been performed by the Architect.

Termination for Convenience: The City has the right to terminate this Contract or any part of it for its sole convenience with thirty (30) days written notice. If terminated, the Architect must immediately stop all work and will immediately cause any of its suppliers and Subcontractors to stop all work. As payment in full for services performed to the date of the termination, the Architect will receive a fee for the percentage of services actually completed. This fee will be in the amount mutually agreed upon by the Architect and the City, based on the Scope of Work.

If there is no mutual agreement, the Contract Administrator will determine the percentage of completion of each task detailed in the Scope of Work and the Architect's compensation will be based on this determination. The City will make this final payment within sixty (60) days after the Architect has delivered the last of the partially completed items. The Architect will not be paid for any work done after receipt of the notice of termination or for any costs incurred by the

Architect's suppliers or Subcontractors, which the Architect could reasonably have avoided.

Cancellation for Cause: The City may also cancel this Contract or any part of it with seven (7) days' notice if the Architect defaults, or if the Architect fails to comply with any of the terms and conditions of this Contract. Unsatisfactory performance as determined by the Contract Administrator or failure to provide the City, upon request, with adequate assurances of future performance are all causes allowing the City to terminate this Contract for cause. Upon cancellation for cause, the City will not be liable to the Architect for any amount, and the Architect will be liable to the City for all damages sustained by the default which caused the cancellation.

If the Architect is in violation of any Federal, State, County or City law, regulation or ordinance, the City may terminate this Contract immediately after giving notice to the Architect.

If the City cancels this Contract or any part of the Contract services, the City will notify the Architect in writing, and upon receiving notice, the Architect must discontinue advancing the work and proceed to close all operations.

Upon cancellation, the Architect must deliver to the City all drawings, special provisions, field survey notes, reports, and estimates, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the City. Use of incomplete data will be the City's sole responsibility.

The Architect must appraise the work it has completed and submit its appraisal to the City for evaluation.

If the Architect fails to fulfill in a timely and proper manner its obligations, or if the Architect violates any of the terms of this Contract, the City may withhold any payments to the Architect for the purpose of setoff until the exact amount of damages due the City from the Architect is determined by a court of competent jurisdiction.

If the City improperly cancels the Contract for cause; the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of this Section 3.3.

3.4 Funds Appropriation

If the City Council does not appropriate funds to continue this Contract, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice of termination to the Architect at least thirty (30) days before the end of its current fiscal period and will pay to the Architect all approved charges incurred through the end of that period.

3.5 Audit

The City may audit all of the Architect's records, calculations, and working documents pertaining to this work at a mutually agreeable time and place.

The Architect's records (hard copy, as well as computer readable data), and any other supporting evidence necessary to substantiate any claims related to this Contract must be open to inspection and subject to audit and reproduction by the City's authorized representative as necessary to permit evaluation and verification of the cost of the work, and any invoices, change orders, payments or claims submitted by the Architect or any of his payees. The City's authorized representative must be afforded access, at reasonable times and places, to all of the Architect's records and personnel throughout the term of this Contract and for a period of three (3) years after the final payment.

The Architect must require all Subcontractors and material suppliers (payees) to comply with the provisions of this section by insertion of these requirements in a written Contract between the Architect and payee. These requirements will apply to all Subcontractors.

If an audit discloses overcharges by the Architect to the City in excess of 1% of the total Contract billings, the actual cost of the City's audit must be reimbursed to the City by the Architect. Any adjustments and payments made as a result of the audit or inspection of the Architect's invoices and records will be made within a period of time not to exceed 90 days from presentation of the City's findings to the Architect.

This audit provision includes the right to inspect personnel records as required by Section 3.22.

3.6 Ownership of Project Documents

All documents, including but not limited to, field notes, design notes, tracings, data compilations, studies, and reports in any format, including but not limited to, written or electronic media, prepared in the performance of this Contract will remain the property of the City and must be delivered to the Contract Administrator before final payment is made to the Architect.

When the work detail covers only the preparation of preliminary reports or plans, there will be no limitations upon the City concerning use of the plans or ideas in the reports or plans for the preparation of final construction plans. The City will release the Architect from any liability for the preparation of final construction plans by others.

3.7 Completeness and Accuracy

The Architect will be responsible for the completeness and accuracy of its work, including but not limited to, survey work, reports, supporting data, and drawings, sketches, etc. prepared by the Architect and will correct, at its expense, all errors or omissions which may be disclosed. The cost to correct those errors will be chargeable to the Architect. Additional construction added to the project will not

be the responsibility of the Architect unless the need for additional construction was created by any error, omission, or negligent act of the Architect. The City's acceptance of the Architect's work will not relieve the Architect of any of its responsibilities.

3.8 Attorney's Fees

Should either party bring any action for relief, declaratory or otherwise, arising out of this Contract, the prevailing party shall be entitled to an award of reasonable attorneys' fees, reasonable costs and expenses as determined by the court. All these fees, costs, and expenses will be considered to have accrued on the commencement of the action.

3.9 Successors and Assigns

This Contract shall be binding upon the Architect, its successors and assigns, including any individual, or other entity with or into which the Architect may merge, consolidate, or be liquidated, or any individual or other entity to which the Architect may sell or assign its assets.

3.10 Assignment

Services covered by this Contract may not be assigned or sublet in whole or in part without first obtaining the written consent of the Purchasing Director and Contract Administrator.

3.11 Subcontractors

The Architect may engage Subcontractors as required for the timely completion of this Contract. If the Architect subcontracts any of the work required by the Contract, the Architect remains solely responsible for fulfillment of all the terms of this Contract.

The Architect will pay its Subcontractors within seven (7) calendar days of receipt of each progress payment from the City. The Architect will pay for the amount of the Work performed by each Subcontractor as accepted and approved by the City with each progress payment. In addition, any reduction of retention, if any, by the City will result in a corresponding reduction to Subcontractors who have performed satisfactory work. The Architect will pay Subcontractors the reduced retention within fourteen (14) calendar days of the payment of the reduction of the retention to the Architect. No Contract between the Architect and its Subcontractors may materially alter the rights of any Subcontractor to receive prompt payment and retention reduction as provided in this Contract.

If the Architect fails to make payments in accordance with these provisions, the City may take any of one or more of the following actions:

- A. To hold the Architect in default under this Contract;
- B. Withhold future payments including retention until proper payment has been made to Subcontractors in accordance with these provisions;

- C. Reject all future offers to perform work for the City from the Architect for a period not to exceed 1 year from the completion date of this project; or
- D. Terminate this Contract.

3.12 Alterations or Additions to Scope of Services

The total Scope of the Architectural Services to be performed is stated in this Contract and any Task Orders issued thereto. Any services requested outside the Scope of Work are additional services. The Architect will not perform these additional services without a written Change Order approved by the City. If the Architect performs additional services without a written Change Order, the Architect will not receive any additional compensation.

3.13 Modifications

Any amendment or modification of the terms of this Contract must be in writing and will be effective only after approval of all parties to this Contract.

3.14 Conflict of Interest

The Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Architect, to solicit or secure this Contract, and that it has not paid or agreed to pay any person or persons, other than a bona fide employee working solely for the Architect any fee, commission, percentage, brokerage fee, gifts or any consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City will have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of any fee, commission, percentage, brokerage fee, gift or contingent fee, together with costs and attorney's fees.

The City may cancel any Contract or Agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the City's departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a consultant to any other party to the Contract with respect to the subject matter of the Contract. The cancellation will be effective when written notice from the City is received by all other parties to the Contract, unless the notice specifies a later time (A.R.S. 38-511).

The Architect will fully reveal in writing any financial or compensatory agreement which it has with a prospective bidder before the City's publication of documents for bidding.

3.15 Force Majeure

Neither party will be responsible for delays or failures in performance resulting from acts beyond their control. These acts will include, but not be limited to, acts

of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

3.16 Taxes

The fee listed in this Contract includes all taxes applicable to the services authorized. The City will have no obligation to pay additional amounts for taxes of any type.

3.17 Advertising

No advertising or publicity concerning the City using the Architect's services shall be undertaken without prior written approval of such advertising or publicity by the City of Scottsdale Contract Administrator and by the City Attorney.

3.18 Counterparts

This Contract may be executed in one or more counterparts, and each executed duplicate counterpart will possess the full force and effect of the original.

3.19 Entire Agreement

This Contract contains the entire understanding of the parties and no representations or agreements, oral or written, made before its execution will vary or modify the terms of this Contract.

3.20 Arizona Law

This Contract must be governed and interpreted according to the laws of the State of Arizona.

3.21 Equal Employment Opportunity

During the performance of this Contract, the Architect will follow the Federal government's guidelines to ensure that employees or applicants applying for employment will not be discriminated against because of race, color, religion, sex or national origin.

No Preferential Treatment or Discrimination:

In accordance with Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

3.22 Compliance with Federal and State Laws

The Architect accepts the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. In addition, the Architect accepts the applicability to it of A.R.S. §34-301 and 34-302. The Architect shall include the terms of this provision in all

contracts and subcontracts for work performed under this Contract, including supervision and oversight.

Under the provisions of A.R.S. §41-4401, the Architect warrants to the City that the Architect and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Architect and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by the Architect or any of its subcontractors will be considered a material breach of this Contract and may subject the Architect or Subcontractor to penalties up to and including termination of this Contract or any subcontract.

The City retains the legal right to inspect the papers of any employee of the Architect or any subcontractor who works on this Contract to ensure that the Architect or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of the Architect and any of its subcontractors to ensure compliance with this warranty. The Architect agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

The City will not consider the Architect or any of its subcontractors in material breach of this Contract if the Architect and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract the Architect enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. The Architect will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The Architect's failure to assure compliance by all its' subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

3.23 Compliance with Americans with Disabilities Act

Architect acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Architect will provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Architect agrees not to discriminate

against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Architect, its employees, agents or assigns will constitute a material breach of this Contract.

3.24 Israel Boycott/Forced Labor Prohibitions

By executing this contract, Architect certifies that it is not currently engaged in and will not for the duration of this contract engage in boycott activity proscribed by A.R.S. § 35-393 *et seq.*

Architect warrants and certifies that it does not currently, and agrees for the duration of the contract that it will not, use:

- 1) The forced labor of ethnic Uyghurs in the People's Republic of China.
- 2) Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
- 3) Any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

If Architect becomes aware during the term of the Agreement that Architect is not in compliance with this paragraph, Architect shall notify the City within five business days after becoming aware of the noncompliance. Failure of Architect to provide a written certification that Architect has remedied the noncompliance within one hundred eighty (180) days after notifying the public entity of its noncompliance, this Agreement shall terminate unless the Term of this Agreement shall end prior to said one hundred eighty (180) day period.

3.25 Evaluation of Architect's Performance

The Architect will be evaluated regarding its performance of this Contract. This evaluation may include, but not be limited to, the following consideration for:

- Completeness
- Accuracy
- Utility Coordination
- Technical Expertise
- Organization
- Appearance of Plans (line work, lettering, etc.)
- Working Relationship with City Staff and Others
- Availability
- Communication Skills (meetings, correspondence, etc.)

This evaluation will be prepared by the staff and used to evaluate the desirability to proceed with negotiations for additional services.

3.26 Notices

All notices or demands required by this Contract must be given to the other party in writing, delivered by hand or by registered or certified mail at the addresses

stated below, or to any other address the parties may substitute by giving written notice as required by this section.

On behalf of the Architect:
Phillip Weddle, Principal Architect
Weddle Gilmore Architects
6916 East Fifth Avenue
Scottsdale, AZ 85251

On behalf of the City:
Melanie Gibson, Project Coordinator
Capital Project Management
City of Scottsdale
7447 E. Indian School Road, Suite 205
Scottsdale, AZ 85251

If hand delivered, Notices are deemed received on the date delivered. If delivered by certified or registered mail, Notices are deemed received on the date indicated on the receipt. Notice by facsimile or electronic mail is not adequate notice.

3.27 Independent Contractor

The services the Architect provides to the City are that of an Independent Contractor, not an employee, or agent of the City. The City may report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City will not withhold income tax as a deduction from contractual payments unless required under federal or state law. As a result of this, Architect may be subject to I.R.S. provisions for payment of estimated income tax. Architect is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

3.28 Ineligible Bidder

The preparer of bid specifications is not eligible to submit a bid or proposal on the solicitation for which it prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which it prepared the specification.

3.29 Indemnification

To the fullest extent permitted by law, Architect, its successors, assigns and guarantors, must defend, indemnify and hold harmless City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any act or omission, negligence, recklessness, or intentional wrongful conduct by Architect in the performance of this Contract, including but not limited to, any Subcontractor or

anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Architect's and Subcontractor's employees.

Insurance provisions in this Contract are separate and independent from the indemnity provisions of this section and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this section shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

4.0 INSURANCE

A current Acord Certificate is acceptable.

Failure to provide an appropriate Certificate of Insurance will result in rejection of your certificate and delay in Contract execution.

Additionally Certificates of Insurance submitted without referencing a Contract number may be subject to rejection and returned or discarded.

4.1 Insurance Representations and Requirements

- A. General: The Architect agrees to comply with all applicable City ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of the Architect, the Architect must purchase and maintain, at its own expense, the required minimum insurance with insurance companies duly licensed or approved to conduct business in the State of Arizona and with an A.M. Best's rating of B++6 or above with policies and forms satisfactory to City. Failure to maintain insurance as required may result in cancellation of this Contract at the City's option.

- B. No Representation of Coverage Adequacy: By requiring insurance, City does not represent that coverage and limits will be adequate to protect the Architect. The City reserves the right to review any and all of the insurance policies and endorsements cited in this Contract but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements in this Contract or failure to identify any insurance deficiency will not relieve the Architect from, nor may it be considered a waiver of Architect's obligation to maintain the required insurance at all times during the performance of this Contract.

- C. Coverage Term: The Architect must maintain all required insurance in full force and effect until all work or services are satisfactorily performed and accepted by The City of Scottsdale, unless specified otherwise in this Contract.

4.1 Insurance Representations and Requirements – Cont'd

- D. Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall continue uninterrupted throughout the term of this Contract by keeping coverage in force using the effective date of this Contract as the retroactive date on all "claims made" policies. The retroactive date for exclusion of claims must be on or before the effective date of this Contract and can never be after the effective date of this Contract. Upon completion or termination of this Contract, the "claims made" coverage shall be extended for an additional three (3) years using the original retroactive date, either through purchasing an extended reporting option; or by continued renewal of the original insurance policies. Submission of annual Certificates of Insurance, citing the applicable coverages and provisions specified herein, shall continue for three (3) years past the completion or termination of this Contract.
- E. Policy Deductibles and or Self-Insured Retentions: The required policies may provide coverage which contain deductibles or self-insured retention amounts. The Architect is solely responsible for any deductible or self-insured retention amount and the City, at its option, may require the Architect to secure payment of the deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- F. Use of Subcontractors: If any work is subcontracted in any way, the Architect must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the Architect in this Contract. The Architect is responsible for executing the Contract with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.
- G. Evidence of Insurance and Required Endorsements: Before commencing any work or services under this Contract, the Architect must furnish the Contract Administrator with Certificate(s) of Insurance, or formal endorsements issued by the Architect's insurer(s) as evidence that policies are placed with acceptable insurers and provide the required coverages, conditions, and limits of coverage and that the coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage, but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Contract. If any of the required policies expire during the life of this Contract, the Architect's must forward renewal Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.

4.1 Insurance Representations and Requirements – Cont'd

Certificates shall specifically cite the following provisions endorsed to the Architect's policy:

1. The City of Scottsdale, its agents, representatives, officers, directors, officials and employees are named as an Additional Insured under the following policies:
 - a) Commercial General Liability
 - b) Auto Liability
 - c) Excess Liability - Follow Form to underlying insurance as required.
2. The Architect's insurance must be primary insurance for all performance of work under this Contract.
3. All policies, except Professional Liability insurance if applicable, waive rights of recovery (subrogation) against the City, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by the Architect under this Contract.
4. If the Architect receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Architect's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

4.2 Required Coverage

- A. Commercial General Liability: The Architect must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy must cover liability arising from premises, operations, independent contractors, products-completed operations, and personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than the underlying insurance.
- B. Professional Liability: The Architect must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the Architect, or anyone employed by the Architect, or anyone for whose acts, mistakes, errors and omissions the Architect is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims. If the Professional Liability insurance policy is written on a "claims made" basis, coverage must extend for 3 years past completion and acceptance of the work or services, the Architect must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3-year period.

4.2 Required Coverage – Cont'd

- C. Vehicle Liability: If any vehicle is used in the performance of the Scope of Work that is the subject of this contract, the Architect must maintain Business Automobile Liability insurance with a limit of \$1,000,000 each accident on the Architect's owned, hired, and non-owned vehicles

assigned to or used in the performance of the Architect's work or services under this Contract. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than the underlying insurance.

- D. Workers Compensation Insurance: Architect must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes applicable to Architect's employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit. If the Architect is a sole proprietor or a single member limited liability company with no employees and has elected not to purchase Workers' Compensation Insurance; a completed and signed Workers' Compensation Waiver Form will substitute for the insurance requirement.

5.0 SOFTWARE LICENSES

If the Architect provides to the City any software licenses, the following provisions apply:

5.1 Source Code Availability

- A. The Architect must furnish the City, without charge, a single copy of the Source Code for the Software immediately upon the occurrence of any of the following:
1. The Architect becomes insolvent; or
 2. The Architect ceases to conduct business; or
 3. The Architect makes a general assignment for the benefit of creditors;
- or**
4. A petition is filed in Bankruptcy by or against the Architect.
- B. Use of the Source Code may not be subject to any greater restrictions than use of the Software itself.
- C. The City must have the right to modify the Source Code in any manner the City believes is appropriate, provided that the Source Code as modified will remain subject to the restrictions of Section 5.1(B).

5.2 Proprietary Protection

- A. The City agrees that if the Architect informs the City that the Software is confidential information or is a trade secret of the Architect; the Software is disclosed on a confidential basis under this Contract and in accordance with the terms of this Contract.
- B. The Architect shall not use or disclose any knowledge, data or proprietary information relating to the City obtained in any manner.

- C. As permitted by Arizona Law, the parties agree that during the term of this Contract and of all Licenses granted under this Contract, and for a period of 7 years after termination of this Contract and of all licenses granted by this Contract, to hold each others' confidential information in confidence. The parties agree, unless required by government regulations or order of

Court, not to make each others' confidential information available in any form to any third party or to use each other's confidential information for any purposes other than the implementation of this Contract. However, if the Architect's confidential information is requested to be divulged under the provisions of the Arizona Public Records Act, A.R.S., Title 39, the Architect must reimburse the City for the full cost of the City's refusal to release the information, including the costs of litigation, the City's attorney fees, fines, penalties or assessments of the opposing party's attorney fees. Each party agrees to take all reasonable steps to ensure that confidential information is not disclosed or distributed by its employees or agents in violation of the provisions of this Contract.

5.3 Non-Infringement

The Architect warrants that the Software provided to the City does not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary or property right of any person or entity.

In the event of a claim against the City asserting or involving such an allegation, the Architect will defend, at the Architect's expense, and will indemnify and hold harmless the City against any loss, cost, expense (including attorney fees) or liability arising out of the claim, whether or not the claim is successful. In the event an injunction or order is obtained against use of the Software, or if in the Architect's opinion the Software is likely to become the subject of a claim of infringement, the Architect will, at its option and its expense:

1. Procure for the City the right to continue using the Software; or
2. Replace or modify the software so that it becomes non-infringing (this modification or replacement must be functionally equivalent to the original); or –
3. If neither 1 nor 2 is practicable, repurchase the Software on a depreciated basis utilizing a straight line 5-year period, commencing on the date of acceptance.

5.4 Third Party License

The Architect shall sublicense to the City any and all third- party Software required in this Contract. The City reserves the right to accept or reject third party license terms. If the City rejects the terms of a third-party license, the Architect shall be responsible to negotiate acceptable terms or to supply Software from another source with terms acceptable to the City. The City's acceptance of the third-party license terms will not be unreasonably withheld.

6.0 SEVERABILITY AND AUTHORITY

6.1 Severability

If any term or provision of this Contract is found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Contract will remain in full force and effect and the term or provision will be considered to be deleted.

6.2 Authority

Each party warrants that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each party has been properly authorized and empowered to enter into this Contract. Each party acknowledges that it has read, understands, and agrees to be bound by the terms and conditions of this Contract.

7.0 Request for Taxpayer I.D. Number & Certification I.R.S. W-9 Form

Upon request, the Architect shall provide the required I.R.S. W-9 FORM which is available from the IRS website at www.irs.gov under its forms section.

8.0 DONATIONS

No donations allowed. To avoid the appearance of impropriety, Architect shall not make any donation to the City, of any goods or services during the term of this Agreement, unless it has specifically been approved by the City Manager or designee.

The City of Scottsdale by its Mayor and City Clerk have subscribed their names this
____ day of _____, 202__.

CITY OF SCOTTSDALE
an Arizona Municipal Corporation

ATTEST:

David D. Ortega
Mayor

Ben Lane
City Clerk

ARCHITECT:

By: _____

Its: _____

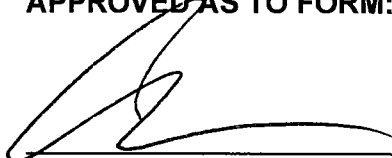
RECOMMENDED:

Alison Tymkiw
City Engineer

George Woods
Risk Management Director

Melanie Gibson
Contract Administrator

APPROVED AS TO FORM:



Sherry R. Scott, City Attorney
By: Eric C. Anderson
Senior Assistant City Attorney

EXHIBIT A
HOURLY RATES

Schedule of Hourly Rates

Principal Architect	\$205 / hr.
Project Manager	\$150 / hr.
Project Architect	\$130 / hr.
Designer II	\$115 / hr.
Designer I	\$105 / hr.
Administrative / Clerical	\$85 / hr.

Schedule of Reimbursable Expenses

In-House Printing / Plotting
External Printing / Plotting Expenses
Courier / Delivery Services



CITY OF SCOTTSDALE

ARCHITECTURAL SERVICES CONTRACT

SOLICITATION NO. 23SQ012

CONTRACT NO. 2023-158-COS

THIS CONTRACT, entered into this 24th day of October 2023, between the City of Scottsdale, an Arizona municipal corporation, the "CITY" and DWL Architects-Planners, Inc., an Arizona Domestic For-Profit Corporation, the "ARCHITECT."

RECITALS

- A. The Mayor of the City of Scottsdale is authorized by the City Charter to execute contracts for professional services; and
- B. The City intends to contract for ARCHITECTURAL services with DWL Architects-Planners, Inc., for one or more individual task orders.
- C. The Architect is qualified to render the services desired by the City.

FOR AND IN CONSIDERATION of the parties' mutual covenants and conditions, the City and the ARCHITECT agree as follows:

1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION

1.1 Scope of Services

- A. Architect will furnish any and all services specified in an individual Task Order for which it is issued a Task Order Notice to Proceed in accordance with this Contract.

The Architect shall complete any Task Orders issued by the City in accordance with the fee schedule set forth in Exhibit A.

1.2 Acceptance and Documentation

- A. Each task will be reviewed and approved by the Contract Administrator to determine acceptable completion.

ATTACHMENT 5

- B. The City will provide all necessary information to the Architect for timely completion of the tasks specified in Section 1.1 above.
- C. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract are to be and remain the property of the City and are to be delivered to the Contract Administrator before final payment is made to the Architect.

2.0 FEES AND PAYMENTS

2.1 Fee Schedule

The fee for individual projects performed under this contract will be negotiated on a project-by-project basis as task orders. The amount paid to the Architect under this contract for all task orders shall not exceed \$3,000,000 for the initial contract term and \$1,500,000 for any successive one-year contract renewal. The task orders shall be negotiated using the rates in effect at the time of this contract, as noted in Exhibit A and billed on a time and materials basis. No lump sum fee proposals will be allowed.

2.2 Payment Approval

The time spent for each task must be recorded and submitted to the Contract Administrator. The Architect must maintain all necessary documents and accounting records pertaining to time billed and to costs incurred and make these materials available at all reasonable times during the Contract period.

Monthly payments will be made to the Architect on the basis of a progress report submitted by the Architect for work completed through the last day of the preceding calendar month. Each task is subject to review and approval by the Contract Administrator to determine acceptable completion.

The Contract Administrator will prepare a partial payment request document for the Architect's acceptance. However, not more than 90% of the total Contract price will be paid before City's final acceptance of all completed work.

The Contract Administrator reserves the exclusive right to determine the amount of work performed and payment due the Architect on a monthly basis.

All charges must be approved by the Contract Administrator before payment.

2.2.1 Payment Terms

The City of Scottsdale's payment terms for Architectural work under State of Arizona A.R.S. Title 34 requirements is fourteen (14) days after invoice submittal by the Architect and the work is certified and approved by the City Contract Administrator.

The City has seven (7) days after receipt of the invoice to prepare and issue a written finding setting forth those items in detail which are not approved for payment under the Contract and which are not certified by the City Contract

Administrator. Until such time as such issues are resolved and certified by the City the fourteen (14) day payment term will not have commenced.

3.0 GENERAL TERMS AND CONDITIONS

3.1 Contract Administrator

The Contract Administrator for the City will be Melanie Gibson, or designee. The Contract Administrator will oversee the performance of this Contract, assist the Architect in accessing the organization, audit billings, and approve payments. The Architect must submit all reports and special requests through the Contract Administrator. The Contract Administrator has the authority to authorize Change Orders up to the limits permitted by the City's Procurement Code.

3.2 Term of Contract

The initial term of this Contract shall be for a period of two years and will commence on or about the 25th day of October, 2023, and will be for two year(s) with the option to extend for three additional years in one year increments.

1. The option to extend may be exercised based on Architect's successful performance and the needs of the City.
2. A Contract Modification will be processed for each extension and will commence on or about the anniversary date of the Contract. Each extension must be authorized by the City Engineer or designee.
- B. The Contract will remain in full force and effect during the performance of any Task Order.

3.3 Termination or Cancellation of Contract

The City may terminate this Contract or abandon any portion of a project that has not been performed by the Architect.

Termination for Convenience: The City has the right to terminate this Contract or any part of it for its sole convenience with thirty (30) days written notice. If terminated, the Architect must immediately stop all work and will immediately cause any of its suppliers and Subcontractors to stop all work. As payment in full for services performed to the date of the termination, the Architect will receive a fee for the percentage of services actually completed. This fee will be in the amount mutually agreed upon by the Architect and the City, based on the Scope of Work.

If there is no mutual agreement, the Contract Administrator will determine the percentage of completion of each task detailed in the Scope of Work and the Architect's compensation will be based on this determination. The City will make this final payment within sixty (60) days after the Architect has delivered the last of the partially completed items. The Architect will not be paid for any work done after receipt of the notice of termination or for any costs incurred by the

Architect's suppliers or Subcontractors, which the Architect could reasonably have avoided.

Cancellation for Cause: The City may also cancel this Contract or any part of it with seven (7) days' notice if the Architect defaults, or if the Architect fails to comply with any of the terms and conditions of this Contract. Unsatisfactory performance as determined by the Contract Administrator or failure to provide the City, upon request, with adequate assurances of future performance are all causes allowing the City to terminate this Contract for cause. Upon cancellation for cause, the City will not be liable to the Architect for any amount, and the Architect will be liable to the City for all damages sustained by the default which caused the cancellation.

If the Architect is in violation of any Federal, State, County or City law, regulation or ordinance, the City may terminate this Contract immediately after giving notice to the Architect.

If the City cancels this Contract or any part of the Contract services, the City will notify the Architect in writing, and upon receiving notice, the Architect must discontinue advancing the work and proceed to close all operations.

Upon cancellation, the Architect must deliver to the City all drawings, special provisions, field survey notes, reports, and estimates, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the City. Use of incomplete data will be the City's sole responsibility.

The Architect must appraise the work it has completed and submit its appraisal to the City for evaluation.

If the Architect fails to fulfill in a timely and proper manner its obligations, or if the Architect violates any of the terms of this Contract, the City may withhold any payments to the Architect for the purpose of setoff until the exact amount of damages due the City from the Architect is determined by a court of competent jurisdiction.

If the City improperly cancels the Contract for cause; the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of this Section 3.3.

3.4 Funds Appropriation

If the City Council does not appropriate funds to continue this Contract, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice of termination to the Architect at least thirty (30) days before the end of its current fiscal period and will pay to the Architect all approved charges incurred through the end of that period.

3.5 Audit

The City may audit all of the Architect's records, calculations, and working documents pertaining to this work at a mutually agreeable time and place.

The Architect's records (hard copy, as well as computer readable data), and any other supporting evidence necessary to substantiate any claims related to this Contract must be open to inspection and subject to audit and reproduction by the City's authorized representative as necessary to permit evaluation and verification of the cost of the work, and any invoices, change orders, payments or claims submitted by the Architect or any of his payees. The City's authorized representative must be afforded access, at reasonable times and places, to all of the Architect's records and personnel throughout the term of this Contract and for a period of three (3) years after the final payment.

The Architect must require all Subcontractors and material suppliers (payees) to comply with the provisions of this section by insertion of these requirements in a written Contract between the Architect and payee. These requirements will apply to all Subcontractors.

If an audit discloses overcharges by the Architect to the City in excess of 1% of the total Contract billings, the actual cost of the City's audit must be reimbursed to the City by the Architect. Any adjustments and payments made as a result of the audit or inspection of the Architect's invoices and records will be made within a period of time not to exceed 90 days from presentation of the City's findings to the Architect.

This audit provision includes the right to inspect personnel records as required by Section 3.22.

3.6 Ownership of Project Documents

All documents, including but not limited to, field notes, design notes, tracings, data compilations, studies, and reports in any format, including but not limited to, written or electronic media, prepared in the performance of this Contract will remain the property of the City and must be delivered to the Contract Administrator before final payment is made to the Architect.

When the work detail covers only the preparation of preliminary reports or plans, there will be no limitations upon the City concerning use of the plans or ideas in the reports or plans for the preparation of final construction plans. The City will release the Architect from any liability for the preparation of final construction plans by others.

3.7 Completeness and Accuracy

The Architect will be responsible for the completeness and accuracy of its work, including but not limited to, survey work, reports, supporting data, and drawings, sketches, etc. prepared by the Architect and will correct, at its expense, all errors or omissions which may be disclosed. The cost to correct those errors will be chargeable to the Architect. Additional construction added to the project will not

be the responsibility of the Architect unless the need for additional construction was created by any error, omission, or negligent act of the Architect. The City's acceptance of the Architect's work will not relieve the Architect of any of its responsibilities.

3.8 Attorney's Fees

Should either party bring any action for relief, declaratory or otherwise, arising out of this Contract, the prevailing party shall be entitled to an award of reasonable attorneys' fees, reasonable costs and expenses as determined by the court. All these fees, costs, and expenses will be considered to have accrued on the commencement of the action.

3.9 Successors and Assigns

This Contract shall be binding upon the Architect, its successors and assigns, including any individual, or other entity with or into which the Architect may merge, consolidate, or be liquidated, or any individual or other entity to which the Architect may sell or assign its assets.

3.10 Assignment

Services covered by this Contract may not be assigned or sublet in whole or in part without first obtaining the written consent of the Purchasing Director and Contract Administrator.

3.11 Subcontractors

The Architect may engage Subcontractors as required for the timely completion of this Contract. If the Architect subcontracts any of the work required by the Contract, the Architect remains solely responsible for fulfillment of all the terms of this Contract.

The Architect will pay its Subcontractors within seven (7) calendar days of receipt of each progress payment from the City. The Architect will pay for the amount of the Work performed by each Subcontractor as accepted and approved by the City with each progress payment. In addition, any reduction of retention, if any, by the City will result in a corresponding reduction to Subcontractors who have performed satisfactory work. The Architect will pay Subcontractors the reduced retention within fourteen (14) calendar days of the payment of the reduction of the retention to the Architect. No Contract between the Architect and its Subcontractors may materially alter the rights of any Subcontractor to receive prompt payment and retention reduction as provided in this Contract.

If the Architect fails to make payments in accordance with these provisions, the City may take any of one or more of the following actions:

- A. To hold the Architect in default under this Contract;
- B. Withhold future payments including retention until proper payment has been made to Subcontractors in accordance with these provisions;

- C. Reject all future offers to perform work for the City from the Architect for a period not to exceed 1 year from the completion date of this project; or
- D. Terminate this Contract.

3.12 Alterations or Additions to Scope of Services

The total Scope of the Architectural Services to be performed is stated in this Contract and any Task Orders issued thereto. Any services requested outside the Scope of Work are additional services. The Architect will not perform these additional services without a written Change Order approved by the City. If the Architect performs additional services without a written Change Order, the Architect will not receive any additional compensation.

3.13 Modifications

Any amendment or modification of the terms of this Contract must be in writing and will be effective only after approval of all parties to this Contract.

3.14 Conflict of Interest

The Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Architect, to solicit or secure this Contract, and that it has not paid or agreed to pay any person or persons, other than a bona fide employee working solely for the Architect any fee, commission, percentage, brokerage fee, gifts or any consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City will have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of any fee, commission, percentage, brokerage fee, gift or contingent fee, together with costs and attorney's fees.

The City may cancel any Contract or Agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the City's departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a consultant to any other party to the Contract with respect to the subject matter of the Contract. The cancellation will be effective when written notice from the City is received by all other parties to the Contract, unless the notice specifies a later time (A.R.S. 38-511).

The Architect will fully reveal in writing any financial or compensatory agreement which it has with a prospective bidder before the City's publication of documents for bidding.

3.15 Force Majeure

Neither party will be responsible for delays or failures in performance resulting from acts beyond their control. These acts will include, but not be limited to, acts

of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

3.16 Taxes

The fee listed in this Contract includes all taxes applicable to the services authorized. The City will have no obligation to pay additional amounts for taxes of any type.

3.17 Advertising

No advertising or publicity concerning the City using the Architect's services shall be undertaken without prior written approval of such advertising or publicity by the City of Scottsdale Contract Administrator and by the City Attorney.

3.18 Counterparts

This Contract may be executed in one or more counterparts, and each executed duplicate counterpart will possess the full force and effect of the original.

3.19 Entire Agreement

This Contract contains the entire understanding of the parties and no representations or agreements, oral or written, made before its execution will vary or modify the terms of this Contract.

3.20 Arizona Law

This Contract must be governed and interpreted according to the laws of the State of Arizona.

3.21 Equal Employment Opportunity

During the performance of this Contract, the Architect will follow the Federal government's guidelines to ensure that employees or applicants applying for employment will not be discriminated against because of race, color, religion, sex or national origin.

No Preferential Treatment or Discrimination:

In accordance with Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

3.22 Compliance with Federal and State Laws

The Architect accepts the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. In addition, the Architect accepts the applicability to it of A.R.S. §34-301 and 34-302. The Architect shall include the terms of this provision in all

contracts and subcontracts for work performed under this Contract, including supervision and oversight.

Under the provisions of A.R.S. §41-4401, the Architect warrants to the City that the Architect and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Architect and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by the Architect or any of its subcontractors will be considered a material breach of this Contract and may subject the Architect or Subcontractor to penalties up to and including termination of this Contract or any subcontract.

The City retains the legal right to inspect the papers of any employee of the Architect or any subcontractor who works on this Contract to ensure that the Architect or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of the Architect and any of its subcontractors to ensure compliance with this warranty. The Architect agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

The City will not consider the Architect or any of its subcontractors in material breach of this Contract if the Architect and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract the Architect enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. The Architect will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The Architect's failure to assure compliance by all its' subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

3.23 Compliance with Americans with Disabilities Act

Architect acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Architect will provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Architect agrees not to discriminate

against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Architect, its employees, agents or assigns will constitute a material breach of this Contract.

3.24 Israel Boycott/Forced Labor Prohibitions

By executing this contract, Architect certifies that it is not currently engaged in and will not for the duration of this contract engage in boycott activity proscribed by A.R.S. § 35-393 *et seq.*

Architect warrants and certifies that it does not currently, and agrees for the duration of the contract that it will not, use:

- 1) The forced labor of ethnic Uyghurs in the People's Republic of China.
- 2) Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
- 3) Any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

If Architect becomes aware during the term of the Agreement that Architect is not in compliance with this paragraph, Architect shall notify the City within five business days after becoming aware of the noncompliance. Failure of Architect to provide a written certification that Architect has remedied the noncompliance within one hundred eighty (180) days after notifying the public entity of its noncompliance, this Agreement shall terminate unless the Term of this Agreement shall end prior to said one hundred eighty (180) day period.

3.25 Evaluation of Architect's Performance

The Architect will be evaluated regarding its performance of this Contract. This evaluation may include, but not be limited to, the following consideration for:

- Completeness
- Accuracy
- Utility Coordination
- Technical Expertise
- Organization
- Appearance of Plans (line work, lettering, etc.)
- Working Relationship with City Staff and Others
- Availability
- Communication Skills (meetings, correspondence, etc.)

This evaluation will be prepared by the staff and used to evaluate the desirability to proceed with negotiations for additional services.

3.26 Notices

All notices or demands required by this Contract must be given to the other party in writing, delivered by hand or by registered or certified mail at the addresses

stated below, or to any other address the parties may substitute by giving written notice as required by this section.

On behalf of the Architect:
Michael Braun, Executive Vice President
DWL Architects + Planners
233 N Central Ave
Phoenix, AZ 85004

On behalf of the City:
Melanie Gibson, Project Coordinator
Capital Project Management
City of Scottsdale
7447 E. Indian School Road, Suite 205
Scottsdale, AZ 85251

If hand delivered, Notices are deemed received on the date delivered. If delivered by certified or registered mail, Notices are deemed received on the date indicated on the receipt. Notice by facsimile or electronic mail is not adequate notice.

3.27 Independent Contractor

The services the Architect provides to the City are that of an Independent Contractor, not an employee, or agent of the City. The City may report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City will not withhold income tax as a deduction from contractual payments unless required under federal or state law. As a result of this, Architect may be subject to I.R.S. provisions for payment of estimated income tax. Architect is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

3.28 Ineligible Bidder

The preparer of bid specifications is not eligible to submit a bid or proposal on the solicitation for which it prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which it prepared the specification.

3.29 Indemnification

To the fullest extent permitted by law, Architect, its successors, assigns and guarantors, must defend, indemnify and hold harmless City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any act or omission, negligence, recklessness, or intentional wrongful conduct by Architect in the performance of this Contract, including but not limited to, any Subcontractor or

anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Architect's and Subcontractor's employees.

Insurance provisions in this Contract are separate and independent from the indemnity provisions of this section and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this section shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

4.0 INSURANCE

A current Acord Certificate is acceptable.

Failure to provide an appropriate Certificate of Insurance will result in rejection of your certificate and delay in Contract execution.

Additionally Certificates of Insurance submitted without referencing a Contract number may be subject to rejection and returned or discarded.

4.1 Insurance Representations and Requirements

- A. General: The Architect agrees to comply with all applicable City ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of the Architect, the Architect must purchase and maintain, at its own expense, the required minimum insurance with insurance companies duly licensed or approved to conduct business in the State of Arizona and with an A.M. Best's rating of B++6 or above with policies and forms satisfactory to City. Failure to maintain insurance as required may result in cancellation of this Contract at the City's option.

- B. No Representation of Coverage Adequacy: By requiring insurance, City does not represent that coverage and limits will be adequate to protect the Architect. The City reserves the right to review any and all of the insurance policies and endorsements cited in this Contract but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements in this Contract or failure to identify any insurance deficiency will not relieve the Architect from, nor may it be considered a waiver of Architect's obligation to maintain the required insurance at all times during the performance of this Contract.

- C. Coverage Term: The Architect must maintain all required insurance in full force and effect until all work or services are satisfactorily performed and accepted by The City of Scottsdale, unless specified otherwise in this Contract.

4.1 Insurance Representations and Requirements – Cont'd

- D. Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall continue uninterrupted throughout the term of this Contract by keeping coverage in force using the effective date of this Contract as the retroactive date on all "claims made" policies. The retroactive date for exclusion of claims must be on or before the effective date of this Contract and can never be after the effective date of this Contract. Upon completion or termination of this Contract, the "claims made" coverage shall be extended for an additional three (3) years using the original retroactive date, either through purchasing an extended reporting option; or by continued renewal of the original insurance policies. Submission of annual Certificates of Insurance, citing the applicable coverages and provisions specified herein, shall continue for three (3) years past the completion or termination of this Contract.
- E. Policy Deductibles and or Self-Insured Retentions: The required policies may provide coverage which contain deductibles or self-insured retention amounts. The Architect is solely responsible for any deductible or self-insured retention amount and the City, at its option, may require the Architect to secure payment of the deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- F. Use of Subcontractors: If any work is subcontracted in any way, the Architect must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the Architect in this Contract. The Architect is responsible for executing the Contract with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.
- G. Evidence of Insurance and Required Endorsements: Before commencing any work or services under this Contract, the Architect must furnish the Contract Administrator with Certificate(s) of Insurance, or formal endorsements issued by the Architect's insurer(s) as evidence that policies are placed with acceptable insurers and provide the required coverages, conditions, and limits of coverage and that the coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage, but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Contract. If any of the required policies expire during the life of this Contract, the Architect's must forward renewal Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.

4.1 Insurance Representations and Requirements – Cont'd

Certificates shall specifically cite the following provisions endorsed to the Architect's policy:

1. The City of Scottsdale, its agents, representatives, officers, directors, officials and employees are named as an Additional Insured under the following policies:
 - a) Commercial General Liability
 - b) Auto Liability
 - c) Excess Liability - Follow Form to underlying insurance as required.
2. The Architect's insurance must be primary insurance for all performance of work under this Contract.
3. All policies, except Professional Liability insurance if applicable, waive rights of recovery (subrogation) against the City, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by the Architect under this Contract.
4. If the Architect receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Architect's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

4.2 Required Coverage

- A. Commercial General Liability: The Architect must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy must cover liability arising from premises, operations, independent contractors, products-completed operations, and personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than the underlying insurance.
- B. Professional Liability: The Architect must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the Architect, or anyone employed by the Architect, or anyone for whose acts, mistakes, errors and omissions the Architect is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims. If the Professional Liability insurance policy is written on a "claims made" basis, coverage must extend for 3 years past completion and acceptance of the work or services, the Architect must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3-year period.

4.2 Required Coverage – Cont'd

- C. Vehicle Liability: If any vehicle is used in the performance of the Scope of Work that is the subject of this contract, the Architect must maintain Business Automobile Liability insurance with a limit of \$1,000,000 each accident on the Architect's owned, hired, and non-owned vehicles

assigned to or used in the performance of the Architect's work or services under this Contract. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than the underlying insurance.

- D. Workers Compensation Insurance: Architect must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes applicable to Architect's employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit. If the Architect is a sole proprietor or a single member limited liability company with no employees and has elected not to purchase Workers' Compensation Insurance; a completed and signed Workers' Compensation Waiver Form will substitute for the insurance requirement.

5.0 SOFTWARE LICENSES

If the Architect provides to the City any software licenses, the following provisions apply:

5.1 Source Code Availability

- A. The Architect must furnish the City, without charge, a single copy of the Source Code for the Software immediately upon the occurrence of any of the following:
1. The Architect becomes insolvent; or
 2. The Architect ceases to conduct business; or
 3. The Architect makes a general assignment for the benefit of creditors;
- or**
4. A petition is filed in Bankruptcy by or against the Architect.
- B. Use of the Source Code may not be subject to any greater restrictions than use of the Software itself.
- C. The City must have the right to modify the Source Code in any manner the City believes is appropriate, provided that the Source Code as modified will remain subject to the restrictions of Section 5.1(B).

5.2 Proprietary Protection

- A. The City agrees that if the Architect informs the City that the Software is confidential information or is a trade secret of the Architect; the Software is disclosed on a confidential basis under this Contract and in accordance with the terms of this Contract.
- B. The Architect shall not use or disclose any knowledge, data or proprietary information relating to the City obtained in any manner.

- C. As permitted by Arizona Law, the parties agree that during the term of this Contract and of all Licenses granted under this Contract, and for a period of 7 years after termination of this Contract and of all licenses granted by this Contract, to hold each others' confidential information in confidence. The parties agree, unless required by government regulations or order of

Court, not to make each others' confidential information available in any form to any third party or to use each other's confidential information for any purposes other than the implementation of this Contract. However, if the Architect's confidential information is requested to be divulged under the provisions of the Arizona Public Records Act, A.R.S., Title 39, the Architect must reimburse the City for the full cost of the City's refusal to release the information, including the costs of litigation, the City's attorney fees, fines, penalties or assessments of the opposing party's attorney fees. Each party agrees to take all reasonable steps to ensure that confidential information is not disclosed or distributed by its employees or agents in violation of the provisions of this Contract.

5.3 Non-Infringement

The Architect warrants that the Software provided to the City does not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary or property right of any person or entity.

In the event of a claim against the City asserting or involving such an allegation, the Architect will defend, at the Architect's expense, and will indemnify and hold harmless the City against any loss, cost, expense (including attorney fees) or liability arising out of the claim, whether or not the claim is successful. In the event an injunction or order is obtained against use of the Software, or if in the Architect's opinion the Software is likely to become the subject of a claim of infringement, the Architect will, at its option and its expense:

1. Procure for the City the right to continue using the Software; or
2. Replace or modify the software so that it becomes non-infringing (this modification or replacement must be functionally equivalent to the original); or –
3. If neither 1 nor 2 is practicable, repurchase the Software on a depreciated basis utilizing a straight line 5-year period, commencing on the date of acceptance.

5.4 Third Party License

The Architect shall sublicense to the City any and all third- party Software required in this Contract. The City reserves the right to accept or reject third party license terms. If the City rejects the terms of a third-party license, the Architect shall be responsible to negotiate acceptable terms or to supply Software from another source with terms acceptable to the City. The City's acceptance of the third-party license terms will not be unreasonably withheld.

6.0 SEVERABILITY AND AUTHORITY

6.1 Severability

If any term or provision of this Contract is found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Contract will remain in full force and effect and the term or provision will be considered to be deleted.

6.2 Authority

Each party warrants that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each party has been properly authorized and empowered to enter into this Contract. Each party acknowledges that it has read, understands, and agrees to be bound by the terms and conditions of this Contract.

7.0 Request for Taxpayer I.D. Number & Certification I.R.S. W-9 Form

Upon request, the Architect shall provide the required I.R.S. W-9 FORM which is available from the IRS website at www.IRS.gov under its forms section.

8.0 DONATIONS

No donations allowed. To avoid the appearance of impropriety, Architect shall not make any donation to the City, of any goods or services during the term of this Agreement, unless it has specifically been approved by the City Manager or designee.

The City of Scottsdale by its Mayor and City Clerk have subscribed their names this
____ day of _____, 202__.

CITY OF SCOTTSDALE
an Arizona Municipal Corporation

ATTEST:

David D. Ortega
Mayor

Ben Lane
City Clerk

ARCHITECT:

By: _____

Its: _____

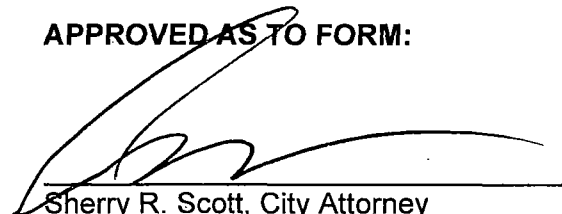
RECOMMENDED:

Alison Tymkiw
City Engineer

George Woods
Risk Management Director

Melanie Gibson
Contract Administrator

APPROVED AS TO FORM:



Sherry R. Scott, City Attorney

By: Eric C. Anderson
Senior Assistant City Attorney

DWL Architects + Planners, Inc.

DWL ARCHITECTS+

Prepared September 2023

City of Scottsdale

Architectural On Call Services

Personnel Category	Hourly Rate
Principal	\$ 233.00
Design Director	\$ 222.00
Sr. Project Manager	\$ 166.00
Project Manager	\$ 146.00
QA/QC Architect	\$ 154.00
Building Code Manager	\$ 163.00
Senior Architect	\$ 156.00
Project Architect	\$ 135.00
Sr. Designer	\$ 122.00
Designer	\$ 111.00
Apprentice Architect	\$ 97.00
CADD/BIM Technician	\$ 105.00
Specifications Writer	\$ 174.00
Sr Interior Design	\$ 111.00
Interior Design	\$ 84.00
Clerical	\$ 96.00
Administration	\$ 127.00

Overhead: 1.7335

Profit: 10%